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April 5, 2004

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Mr. Justice Edward P. MacCallum
The Commission of Inquiry into the
Wrongful Conviction of David Milgaard
1020-606 Spadina Cres. East
Saskatoon, SK
S7K 3H1

Dear Mr. Commissioner:

Application for Standing by Ms. Joyce Milgaard

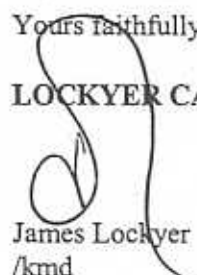
I enclose an affidavit in support of an application for standing and funding for Ms. Milgaard at the *Inquiry*. I hope its contents are sufficient.

Unfortunately, I cannot be in attendance on April 20, 2004 to address her application before you. I am scheduled to be in the Ontario Court of Appeal for one week commencing April 19. Hersh Wolch has agreed to represent Ms. Milgaard's interests on that date or, if you prefer, I can appear before you on a later date to address this issue.

I would like to take this opportunity to congratulate you on your appointment as Commissioner and to wish you well. I hope that I, and AIDWYC, can provide you with assistance throughout the *Inquiry*.

Yours faithfully,

LOCKYER CAMPBELL


James Lockyer
/kmd

cc. David Hodson Fax: 306-975-7145
Hersh Wolch Fax: 403-263-1111
Joyce Milgaard Fax: 204-738-2728

IN THE MATTER OF a Commission of Inquiry into the Wrongful Conviction of David Milgaard;

AND IN THE MATTER OF an application by Joyce Milgaard for standing at the said Commission of Inquiry.

AFFIDAVIT OF JOANNE McLEAN

I, JOANNE McLEAN, Barrister and Solicitor, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SWEAR AS FOLLOWS:

1. I am a member in good standing of the Law Society of Upper Canada and, as such, have knowledge of the matters to which I hereinafter depose. This affidavit is sworn in support of Joyce Milgaard's application for standing and funding at the *Commission of Inquiry into the Wrongful Conviction of David Milgaard*.

2. Between 1995 and 1997, James Lockyer, barrister and solicitor, and I arranged the post-conviction DNA testing in David Milgaard's case which, in July 1997, resulted in his exoneration and the subsequent arrest and conviction of Larry Fisher for the murder of Gail Miller.

3. I first met Joyce Milgaard, David's mother, in 1992. Since then, we have kept in regular contact.

4. Joyce Milgaard worked tirelessly and fearlessly for David. Her faith in his innocence never wavered. She devoted almost thirty years of her life to overturning his wrongful conviction. The energy and time that she put into convincing Canadians, and the Canadian government and the Minister of Justice and the Supreme Court of Canada, of her son's innocence was remarkable. Through her perseverance, her name but, more importantly, the name of her son became known to the nation. She devoted all her emotional resources and her life savings to securing his freedom. She recruited Centurion Ministries from Princeton, New Jersey, and countless Canadians to help in her cause. She owes a huge debt to all those people who helped her and her son to see to it that the *Inquiry* into her son's wrongful

conviction produces results that will ensure as much as possible that no one ever has to go through again in Canada what she, David and their family went through. Without Mrs. Milgaard, David would never have been released or exonerated.

5. Mrs. Milgaard needs to be a part of the *Inquiry* into David's wrongful conviction. She will be materially affected by its findings and recommendations. She is a founding director of the *Association in Defence of the Wrongly Convicted* (AIDWYC). She remains an active director today. AIDWYC is devoted to freeing those convicted of crimes that they did not commit, and to working for systemic changes to avoid wrongful convictions in the future. She is a director of AIDWYC (Manitoba) founded as a result of the *The Inquiry Regarding Thomas Sophonow* held in Winnipeg in 2000-2001. She continues to work for the wrongly convicted, the most recent example being for James Driskell, wrongly convicted of murder in 1991 in Winnipeg, Manitoba. He was released on bail in December, 2003 pending his application to the Minister of Justice under section 696.1 of the *Criminal Code*. She can play a significant role as a witness and as a full time participant in the *Inquiry* into her son's wrongful conviction.

6. This *Inquiry* has a number of issues to consider. The causes of David's wrongful conviction and the reasons why 23 years passed before his conviction was quashed, and 28 years passed before he was exonerated, will be addressed. All the causes have systemic implications to them. For example, Mrs. Milgaard wants to participate in addressing the following issues:

- the conduct of the police in their investigation of Gail Miller's murder, and the tactics that they used in questioning witnesses,
- the conduct of the Crowns who prosecuted her son both before and after his conviction,
- issues of non-disclosure before and after the conviction of David,
- the inappropriate responses for almost 30 years from the Saskatchewan government and the Federal government to her son's wrongful conviction,
- the problems inherent in the section 696.1 process (formerly section 690),

- the need for the creation of an independent Commission to review cases of wrongful conviction,
- the extraordinary delay encountered in seeking release of exhibits from the Department of Justice for the DNA testing in 1997,
- the need for funding for those who have been wrongfully convicted so that they can present their case for wrongful conviction,
- an examination into the seven year delay from David's release in 1992 before he was compensated.

This list is not meant to be exhaustive.

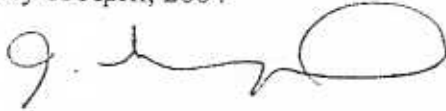
7. Mrs. Milgaard wants to be represented at the *Inquiry* by James Lockyer, a lawyer who is well known for his advocacy for the wrongly convicted. She is not in a position to pay for his services. In any event, she should not have to pay for his services. She, like David and Gail Miller's family, is a victim of what happened. In some regards, her interests in the *Inquiry* are similar to those of David, but in many regards they are different because of the role she played on the outside to secure David's freedom.

8. Mrs. Milgaard therefore prays that the Commissioner, the Honourable Mr. Justice Edward P. MacCallum, of the *Commission of Inquiry into the Wrongful Conviction of David Milgaard* grant her standing for the following reasons:

- (a) she is directly and substantially affected by the *Inquiry*
and
- (b) she represents interests and perspectives essential to the successful conduct of the *Inquiry*
and
- (c) she has special experience and expertise with respect to matters within the Commission's terms of reference.

The funding requested is limited to her counsel, James Lockyer and his agents, and his travel, accommodation and other expenses justifiable in his representation of Mrs. Milgaard.

SWORN before me in the City of Toronto,)
in the Province of Ontario, this 4th
day of April, 2004



A Commissioner, etc



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JOANNE McLEAN
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